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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,936

11/26/2003

Declan Somerville

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12/15/2005

SAND & SEBOLT

AEGIS TOWER, SUITE 1100

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EXAMINER

DEVOTI, PAUL D

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/723,936	<b>Applicant(s)</b> SOMERVILLE, DECLAN	
	<b>Examiner</b> Paul Devoti	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show elements 56 (page 7, line 17 of specification) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities:
  - a. Page 2, line 9: "Stabilise" is misspelled
  - b. Page 2, line 19: "for m" is misspelled, and should be replaced with "form"
  - c. Page 5, line 15: element 22 should be replaced with 18
  - d. Page 6, line 31: element 40, "water supply pipe", is earlier referred to as "branch pipe member"

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 3, 7, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 3 recites the phrase "an I-shaped open three-sided channel member". It is unclear whether the applicant is claiming an I-shaped member or an open three-sided channel member. For the purposes of examination, the "I-shaped member" will be considered on its own.
6. Claim 7 improperly claims a branch pipe/supply pipe. Since claims 1, 5, and 6 are directed to a garden stake support per-se, the recitation of a branch pipe/supply pipe renders the scope of claim 7 indefinite. If applicant intends to claim a combination

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of a garden stake support and pipe, all of the claims should be amended to recite a combination.

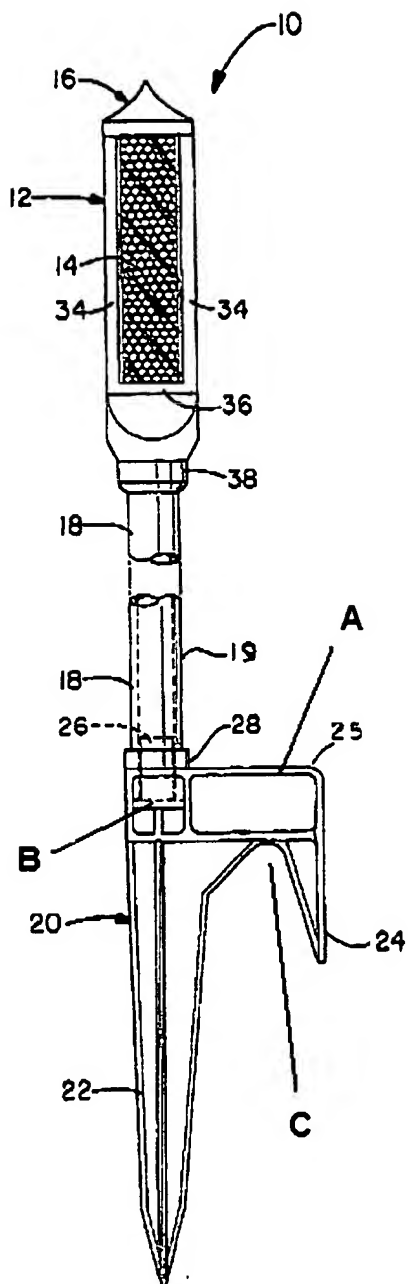
7. Claim 14 improperly claims a second garden stake support. Since claims 1 and 13 are directed to one garden stake support, the recitation of a second stake renders the scope of claim 14 indefinite. If applicant intends to claim a combination of two garden stake supports, all of the claims should be amended to recite a combination.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukky (US Patent Number 6823814). Bukky discloses a stake support with a lowermost portion (24) and an offset portion (25) connecting the lowermost portion to an uppermost portion (18) that is axially offset from the lowermost portion (24).

Additionally, an open platform directly above the lowermost portion (24) is disclosed by offset portion (25) that inherently serves as a hammer point when driving the lowermost portion into the ground. Regarding claim 2, Bukky discloses that the lowermost portion (24) is, in use, located below the ground surface, and the uppermost portion (18) is located above the ground surface. Regarding claim 5, the offset portion (25) extends at a right angle to the lowermost portion and includes parallel upper (A) and lower (B) frame members. Regarding claim 13, Bukky discloses a removal wedge consisting of an asymmetric notch (C) cut downwardly from the offset portion (25).



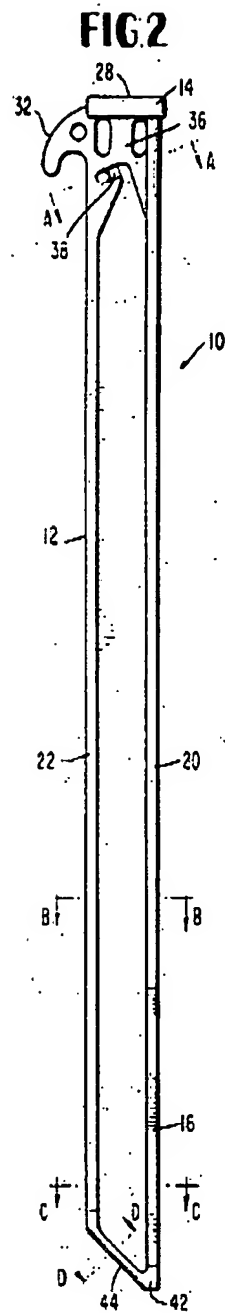
Bukky (US Patent Number 6823814) Figure 1

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

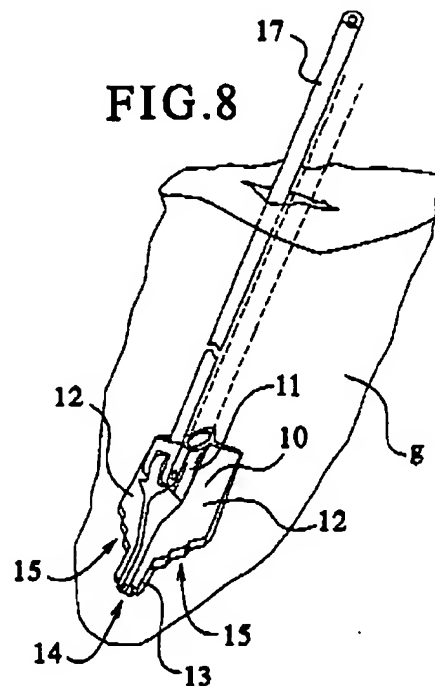
10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Blankemeyer et al. (US Patent Number 3732878). Bukky discloses everything previously mentioned, but does not teach an I-shaped member where a first side element extends further and is longer than a second side element, and the lower end of the lowermost portion forms a point. Blankemeyer et al., however, teaches an I-shaped member (12) where a first side element (20) extends further and is longer than a second side element (22) and forms a point (42). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bukky's stake device to include a lowermost portion with an I-shaped member, as taught by Blankemeyer to easily and securely drive the lowermost portion into the ground.



Blankemeyer et al. (US Patent Number 3732878) Figure 2

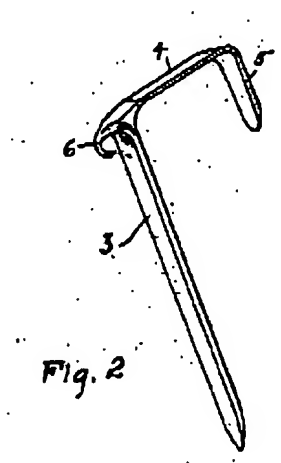
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11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Blankemeyer as applied to claim 3 above, and further in view of Jewett et al. (US Patent Number 6237289). Bukky in view of Blankemeyer discloses everything previously mentioned, including a bottom edge extending slopingly between the first (20) and second side elements (22), but does not teach that the bottom edge includes an indented shoulder portion. Jewett et al., however, teaches a stake device having an indented shoulder portion (15) on the bottom edge. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to further modify Bukky's garden stake support, already modified by Blankemeyer, to include an indented shoulder portion on the bottom edge of the lowermost portion as taught by Jewett et al. to further facilitate penetration of the lowermost portion into the ground.



Jewett et al. (US Patent Number 6237289) Figure 8

12. Claim 6 is rejected under 35 U.S.C 103(a) as being unpatentable over Bukky in view of Kleinhesselink (US Patent Number 1555322). Bukky discloses everything previously mentioned, but does not teach a curled tongue extension on the outer side of the lower frame member. Kleinhesselink, however, teaches a hook (6) on the outer side of the frame member (4) of a stake. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bukky's stake support to include a curled tongue extension on the outer side of the frame member, as taught by Kleinhesselink to engage and hold an element such as a rope or pipe.



Kleinhesselink (US Patent Number 1555322) Figure 2

13. Claim 7 is rejected under 35 U.S.C 103(a) as being unpatentable over Bukky in view of Kleinhesselink. The upper (A) and lower (B) parallel frame members of the offset portion (25) are capable of providing space for a branch pipe member to extend from a supply pipe towards the uppermost portion.

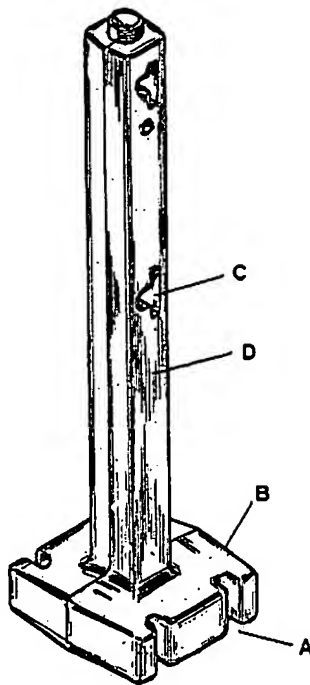
14. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Fitzsimmons et al. (US 5752349). Bukky discloses everything previously mentioned including a base section (19) which is fitted with an interlocking upright section (12), where the base section (19) extends upwardly from the frame members (A and B). The base section (19) has a footprint that allows the upper frame member (A) to form a narrow ledge around the base section (19). Bukky also discloses the base section has a collar (38) that extends around the base section (19) in line with the first ledge formed by the upper frame member (A), and that the lower frame member (B) forms a narrow section ledge around the bottom of the base section. Bukky does not teach that the collar extends partially around the base section. Fitzsimmons, however, teaches a partial collar (44) around a base section. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bukky's stake support to include a partial collar, as taught by Fitzsimmons, to make the stake support aesthetically pleasing.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Fitzsimmons as applied to claim 8 above, and further in view of Despino (US D445054). Bukky discloses everything mentioned, but does not teach a notch cut into the first ledge and collar on opposing sides of the base member where the notches are axially aligned on either side of the stake base member. Despino, however, teaches a structure with notches (A) on the base member (B) and notches (C) on the upper

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member (D), which are axially aligned on either side of the base member (B).

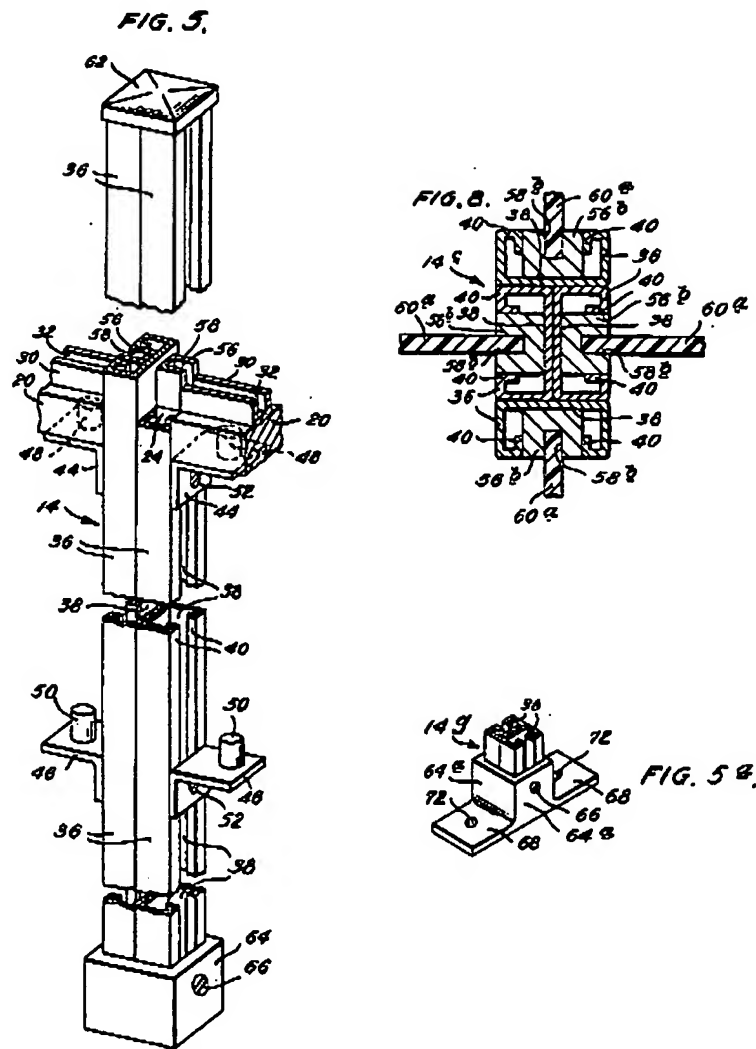
Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bukky's stake, already modified by Fitzsimmons, to include notches on the base member and collar on the upper member, as taught by Despino, to securely attach and hold a member such as a pipe.



Despino (US D445054) Figure 6

16. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky in view of Fitzsimmons and Despino as applied to claim 10 above, and further in view of Ferreira (US Patent Number 3304683). Bukky in view of Fitzsimmons and Despino discloses everything previously mentioned, but does not teach an

interlocking section with an extrusion that in cross section takes the form of a back-to-back C-shaped element and that the interlocking section is formed of two interlocked back to back C-shaped elements forming a stable structure, where the second back to back C-shaped element is partially located within one back to back C-shaped element and is received in slots in the upper edge of the base member. Ferreira, however, discloses an interlocking upright section (36) in a base section (64), where the cross section of the interlocking section (36) takes the form of a back-to-back C-shaped element. Ferreira also teaches an interlocking section (36) formed of two interlocked back to back C-shaped elements, where the second back to back C-shaped element is located within one back to back C-shaped element (Figure 8) and is received in slots in the upper edge of the base section (64). Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Bukky's stake, already modified by Fitzsimmons and Despino, to include an interlocking section with an extrusion that in cross section takes the form of a back-to-back C-shaped element and also an interlocking section (36) formed of two interlocked back to back C-shaped elements, where the second back to back C-shaped element is located within one back to back C-shaped element and is received in slots in the upper edge of the base section (64), as taught by Ferreira to provide a strong, secure, and easily manufactured interlocking section.



Ferreira (US Patent Number 304683) Figures 5, 5a, and 8

17. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bukky. Bukky's stake support obviously provides the ability for a second stake to be used as a levering tool to engage the embedded stake and facilitate the removal process.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dailey et al. (US Patent Number 5044200) discloses a garden stake with a lowermost portion connected to an uppermost portion that is axially offset from the lowermost portion. Rotheiser (US Patent Number 3635232) discloses a stake with an I-shaped channel member, where a first side element extends further than a second side element, and the lowermost portion forms a point. Hempfling (US Patent Number 4173086) discloses a stake with a lowermost portion connected to an uppermost portion that is axially offset from the lowermost portion, and the offset portion has an open platform directly above the lowermost portion. Whitney (US Patent Number 2817346) discloses a stake with a curled tongue extension on the outer side of a frame member. Schwartz et al. (US Patent Number 6401408) discloses a stake with indented shoulder portions along the edges of the lowermost portion. Davis (US Patent Number 5026061) discloses a stake device with an uppermost, lowermost, and offset portion. The stake has an open ended base section with an interlocking upright section and a collar that extends around the base section in line with the frame member. Barbera (US Patent Number 5765321) discloses a ground stake with an I-shaped channel member. Rood (US Patent Number 4440370) discloses a stake with parallel upper and lower frame members. Flippin Jr. (US Patent Number 6223759) discloses an apparatus with an uppermost, lowermost, and offset portion with spaced upper and lower parallel frame members. Herr (US Patent Number 3754360) discloses a stake with an I-shaped lowermost portion. Ibarra (US Patent Number 6490823) discloses a

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stake with an uppermost, lowermost, and offset portion where the uppermost portion consists of an open ended base section with an interlocking upright section. Chanslor (US Patent Number 6439744) discloses a stake assembly where the uppermost portion consists of an open ended base section into which is fitted an interlocking upright section. Wirth (DE 2821616) discloses a support with an I-shaped channel portion.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PD *PD*  
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*Lanna Mai*